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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,917	06/19/2003	Bernadette Jestrabek-Hart	3063	9870

35459 7590 11/30/2004

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EXAMINER

WIEKER, AMANDA FLYNN

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/601,917		JESTRABEK-HART, BERNADETTE	
	Examiner		Art Unit	
	Amanda F. Wieker		3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 10, 11 and 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 7-9 and 12-16 is/are rejected.
- 7) ☒ Claim(s) 3-6 is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>19 June 03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species A in the reply filed on 08 November 2004 is acknowledged. The traversal is on the ground(s) that Species B and C are merely "scaled-up" and "scaled-down" versions of Species A, and comprise the same inventive concept, and that restriction to a single species would provide no protection for alternate uses of the device. Applicant also argues that the examiner has not identified preliminary classifications for the different species, as being distinctly different from each other, and that no excessive burden is imposed on the examiner in the examination of the three species.

This is not found persuasive because as noted in Applicant's own Brief Description of the Drawings, Figures 6a and 6c disclose alternate embodiments of the invention, applied to entirely different body parts from that shown in Figure 1a and which cannot be used interchangeably. Further, the different species are separately classifiable as follows: Species A in 602/26, Species B in 602/20 and Species C in 602/19. Due to the divergent searches and divergent body parts protected by each Species, an undue burden would be imposed on the examiner if required to examine all three species.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 10-11 and 17-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on November 08, 2004.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

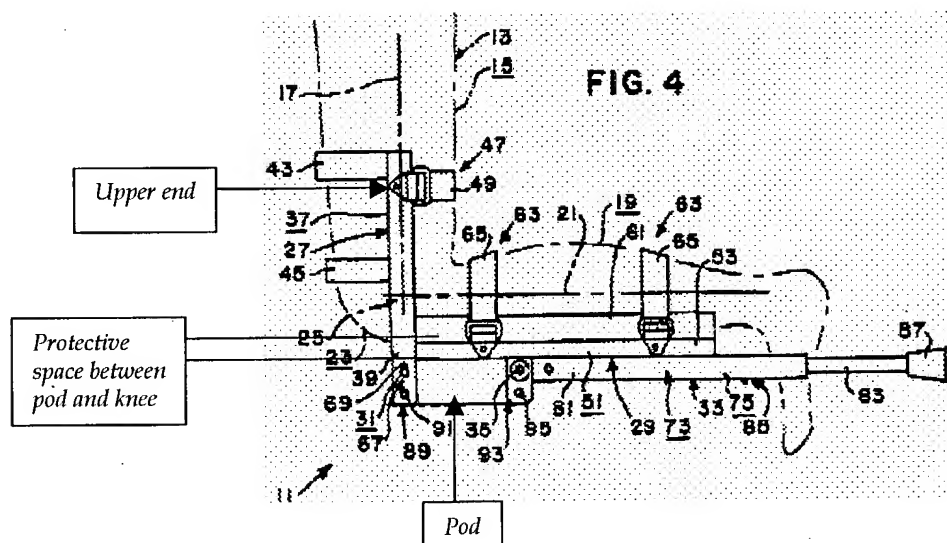
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 7, 9 and 12-16 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Number 6,799,592 to Reynolds.

Reynolds discloses an orthopedic device for transfer of pressure from a sensitive knee area (23) of a body to an adjacent load-bearing thigh area (15) of the body comprising: (a) a pod (identified below) that interfaces to a contact surface; (b) a support means (39, 41) having a length, an upper end and a lower end, said pod being pivotally attached to said support means at said lower end (at 31); and (c) an attachment means (49) for attachment of the orthopedic device to the load-bearing area of the body (15) and connected to said support means at said upper end, as seen below. The attachment means provide quick-release means in the form of an adjustable strap. Reynolds further discloses, by the normal use of the device, a method of transferring a load from a pressure-sensitive knee area (23) of a body to a load-bearing area of the body (15), wherein said load is generated as if said pressure-sensitive area of the body were to rest upon a kneeling support surface, said transfer of the load being accomplished without contact between said pressure-sensitive area of the body and said support surface, the method comprising: (a) attaching a support structure (39, 41) to said load-bearing area of the body

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(thigh); and (b) moving the body into a position as if said pressure-sensitive area of the body were to rest upon said support surface such that contact with said support surface is made by a pod (identified below) pivotally attached to the distal end of said support structure so as to provide a protective space between said pod and said pressure-sensitive area of the body, thereby transferring the load presented by the body upon said support surface from said support surface directly to said load-bearing area of the body, by means of said pod and said support structure associated with said pod, completely bypassing said pressure-sensitive area of the body. Based on the relative dimensions shown in the Figure, it appears that the pod provides a protective space between the pod and the knee of approximately $\frac{1}{2}$ to 1 inch, due to the fact that the average width of the calf is 6 inches, and the space between the pod and the knee appears to be approximately $\frac{1}{6}$ of the width of the calf.



Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds in view of U.S. Patent Number 4,599,748 to Garcia.

Reynolds discloses the previously described orthopedic device having means for attaching the orthopedic device to the thigh of the user, wherein the attachment means are connected to the support means. Reynolds does not specify that the attachment means comprise hook and loop fasteners.

Garcia discloses an orthopedic device for transfer of pressure from a sensitive knee area of a body to an adjacent load-bearing thigh area of the body comprising: (a) a pod (30) that interfaces to a contact surface; (b) a support means (18) having a length, an upper end and a lower end, said pod being attached to said support means at said lower end; and (c) an attachment means (24, 26) for attachment of the orthopedic device to the load-bearing area of the body and connected to said support means at said upper end. Garcia specifies that the attachment means comprise a hook and loop fastener to provide a releasable connection.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the orthopedic device disclosed by Reynolds, wherein the attachment means comprise a hook and loop fastener, as taught by Garcia, to provide a releasable connection.

7. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds in view of U.S. Patent Number 5,300,016 to Marlatt.

Reynolds discloses the previously described orthopedic device having a pod that interfaces to a contact surface and a support means having a length, an upper end and a lower

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end, said pod being pivotally attached to said support means at said lower end. Reynolds does not specify that the support means have a means of adjustment of said length.

Marlatt discloses an orthopedic device for transfer of pressure from a sensitive knee area of a body to an adjacent load-bearing thigh area of the body comprising: (a) a device (50) that interfaces to a contact surface; (b) a support means (70) having a length, an upper end and a lower end, said device being attached to said support means below said lower end; and (c) an attachment means (86) for attachment of the orthopedic device to the load-bearing thigh area of the body and connected to said support means at said upper end. Marlatt specifies that the support means have means for adjustment of its length, to accommodate person's of different height (column 8, lines 29-35).

It would have been obvious to one skilled in the art at the time the invention was made to have provided the orthopedic device disclosed by Reynolds, wherein the support members comprise length adjustment means, as taught by Marlatt, to provide a device that can accommodate person's of different height.

Allowable Subject Matter

8. Claims 3-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

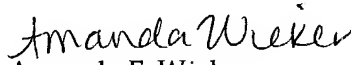
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda F. Wieker whose telephone number is 571-272-4794. The examiner can normally be reached on Monday-Thursday, 8:30 - 6:00 and alternate Fridays.

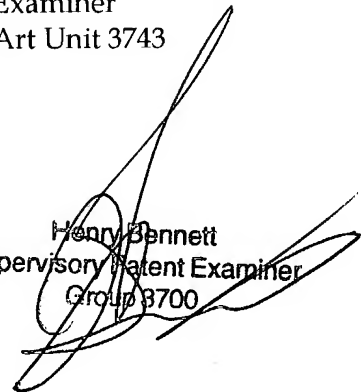
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Amanda F. Wieker
Examiner
Art Unit 3743

afw


Henry Bennett
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